

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 514

THE UNITED STATES OF AMERICA, PETITIONER

VS.

JAMES P. MITCHELL

No. 515

THE UNITED STATES OF AMERICA, PETITIONER

VS.

JAMES P. MITCHELL

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA**

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In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JAMES P. MITCHELL, DEFENDANT

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

In the District Court of the United States
for the District of Columbia

Holding a Criminal Term—October Term, A. D. 1942

G. J. No. Orig., Criminal No. 70905, Housebreaking and Larceny

Indictment

Filed November 23, 1942

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one James P. Mitchell, on, to wit, the eleventh day of August 1942, and at the District of Columbia aforesaid, the dwelling of one Harry G. Meem, there situate, feloniously did enter, with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said dwelling then and there being, feloniously to steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

4 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one James P. Mitchell, on, to wit, the eleventh day of August 1942, and at the District of Columbia aforesaid, one jar, of the value of one dollar, two collar buttons, each of the value of one dollar, ten studs, each of the value of fifty cents, one pistol, of the value of five dollars, one razor, of the value of one dollar, two packages of toothpaste, each of the value of ten cents, two tubes of shaving cream, each of the value of ten cents, and one

quart of wine, of the value of two dollars, of the goods, chattels, and property of one Harry G. Meem; one pair of lorgnettes, of the value of three dollars, one finger ring, of the value of ten dollars, one pencil, of the value of three dollars, one teapot, of the value of five dollars, one pair of opera glasses, of the value of five dollars, one bell, of the value of one dollar; one suitcase, of the value of one dollar, and one collarette, of the value of five dollars, of the goods, chattels, and property of one Louise H. Meem, then and there being found in the dwelling referred to in the first count of this indictment feloniously did steal, take, and carry away; against the form of the statute in each case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,
*Attorney of the United States in
and for the District of Columbia.*

A true bill:

HARRY W. BOSS, *Foreman.*

Filed in open court, Nov. 23, 1942, Charles E. Stewart, Clerk.

In District Court of the United States for the
District of Columbia

The Court resumes its session pursuant to adjournment. Mr.
Justice Laws, Presiding.

5 Nos. 70904, 70905, 70906, 70907—Indicted for Housebreak-
ing and Larceny

UNITED STATES

v.

JAMES P. MITCHELL

Arraignment and plea

November 23, 1942

Come as well the Attorney of the United States as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; whereupon the defendant being arraigned upon each indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like, and thereupon by consent of the United States Attorney the defendant is granted leave within ten days on each case to withdraw

said plea and demur to, or move to quash the said indictments, or otherwise plead as he may be advised.

In the District Court of the United States for the District of
Columbia

Criminal Nos. 70884 to 70899, incl., 70900 to 70907, incl.

UNITED STATES

v.

JAMES P. MITCHELL

Motion to suppress

Filed March 31, 1943

Now comes the defendant through his counsel and moves the Court to suppress as evidence all property taken from the premises of defendant as a result of an illegal search and seizure and calls attention to affidavit annexed hereto.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Service acknowledged:

BERNARD MARGOLIUS,
Bernard Margolius,

Assistant U. S. Attorney.

March 31, 1943.

6 In the District Court of the United States for the
District of Columbia

Criminal Nos. 70884, 70885, 70886 to 70889, inc., 70900, 70901,
70902, 70907, 70906, 70905, 70904, 70903, 70902

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

Filed March 31, 1943

DISTRICT OF COLUMBIA, ss:

James P. Mitchell, being first duly sworn on oath as required by law, deposes and says that he is the defendant in the above-

entitled cases and that in October 1942 he was the owner of premises located at 1427 N Street Northwest in the District of Columbia; defendant says further that he was the sole owner of said premises and that the police officers unlawfully entered said premises without a search warrant and illegally seized certain of his personal property, and much of his furnishings and fixtures was pillaged and rendered useless; affiant says that the property illegally seized has been retained by the police officers and has never been returned to the defendant. Affiant says that the police officers also illegally seized certain bed clothing, such as linens, spreads, towels, etc., and many personal papers belonging to the defendant and persons related to him, and such material could under no theory be considered proceeds of a crime; affiant says that the police officers realized their mistake and have returned to the defendant certain of the bed clothing seized but have retained much of it; affiant says further that the police officers illegally seized certain articles of jewelry, money, and postage stamps belonging to defendant and persons related to him and have failed to return same.

JAMES P. MITCHELL
James P. Mitchell.

Subscribed and sworn to before me this 30th day of March 1943.

[SEAL]

JOHN S. MURDOCK,
Notary Public, D. C.

7 In the District Court of the United States for the
District of Columbia

The Court resumes its session pursuant to adjournment: Mr.
Justice McGuire, presiding.

No. 70905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion to suppress

April 1, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion to suppress evidence, coming on to be heard,

after argument by the counsel, is by the Court overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Motion for continuance

Filed April 1, 1943

Now comes the defendant and moves the Court for a continuance in this cause and calls attention to affidavit annexed hereto.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

Service acknowledged:

BERNARD MARGOLIUS,
Assistant U. S. Attorney.

Denied:

McGUIRE, J.,
3/3/143.

8 In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

Filed April 1, 1943

DISTRICT OF COLUMBIA, ss:

James P. Mitchell being first duly sworn on oath as required by law deposes and says that there is a necessary witness in New

York City—Cosmo J. Testa—that he desires to have to testify in his behalf; that he is unable to go to trial without said witness and that his testimony and material and important; that he received notice of this trial on March 30th, and contacted his counsel who could not see him until Tuesday night, and he was then told by his counsel to endeavor to locate said witness by telephone on March 31st but has been unable to do so; he asks that the case be continued to such time as said witness can be produced.

JAMES P. MITCHELL,
James P. Mitchell.

Subscribed and sworn to before me this 1st day of April 1943.

CHARLES E. STEWART,
*Clerk, District Court of the United States
for the District of Columbia.*
By H. M. HULL, *Asst. Clerk.*

In the District Court of the United States for the District of
Columbia

The Court resumes its session pursuant to adjournment: Mr. Justice McGuire, presiding.

9 No. 70,905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion to continue

April 1, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion for continuance, coming on to be heard, after argument by the counsel, is by the Court overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In The District Court of the United States for the District
of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of bias and prejudice

Filed April 1, 1943

DISTRICT OF COLUMBIA, ss:

James P. Mitchell being first duly sworn on oath as required by law deposes and says that Judge Matthew F. McGuire has a personal bias and prejudice against him; affiant says that this is based upon information and belief and says that it is due to the rebuke administered to the mother of defendant in open court this morning when the hearing on the motion to suppress was in progress; affiant says that his mother was a necessary witness in the hearing and it was her intention to be in court at 10:00 A. M. but due to circumstances beyond her control she did not arrive until about 10:30 A. M. and endeavored to enter the courtroom of Judge McGuire but had difficulty in obtaining admittance and the said judge embarrassed and humiliated his mother in open court and accused

10 her of creating a disturbance and lectured and rebuked her without giving her an opportunity to defend herself or to explain her side of the case; affiant says that this attitude on the part of the judge has created such feeling and bias and prejudice against defendant that he could not receive a fair trial from Judge McGuire and would be fearful to go to trial in the courtroom of Judge McGuire; affiant says further that the said judge became angered and incensed at defendant's counsel when defendant's counsel was attempting to defend affiant and to protect the constitutional and legal rights of the affiant and that the attitude of hostility on the part of said judge against defendant's counsel was so striking and so noticeable and it would in the opinion of affiant be absolutely impossible for the said judge to deal fairly and impartially with affiant and the feeling of said judge has created in the mind of the said judge such bias and prejudice toward affiant that the said judge could not accord affiant a fair trial.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 1st day of April 1943.

CHARLES E. STEWART,
*Clerk, District Court of the United States,
 for the District of Columbia.*

By MARION E. LEWIS, *Ass't. Clerk.*

I certify that this affidavit of bias and prejudice is filed in good faith and not for the purpose of delay. I certify further that the affidavit could not be filed sooner since the matters set forth did not arise until this day.

JAMES J. LAUGHLIN,
 James P. Mitchell.
Council for Defendant.

APRIL 1, 1943.

Service acknowledged:

BERNARD MAROOLUS,
Assistant U. S. Attorney,

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In the District Court of the United States
 for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

*Motion to summon witness for the defendant at the expense
 of the United States*

Filed April 1, 1943

Now comes the defendant James P. Mitchell and says unto the Court that under the provisions of Section 109, Title 23, District of Columbia Code, that he needs the following witness at his trial both on the merits and in the motion to suppress: Cosmo J. Testa, 303 E. 146th St., New York, N. Y., defendant says that he is a necessary witness and he cannot safely go to trial without him; defendant says he is not possessed of sufficient means and is actually unable to pay the expenses of the said Testa; defendant says that the witness Testa will testify as to the illegal search and seizure and will testify also as to the police brutality when the police officers extracted from defendant by a force a confession

after being unlawfully held for nine days without being taken before a committing magistrate contrary to the Supreme Court ruling in the McNabb case.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 30th day of March 1943.

[SEAL]

JOHN S. MURDOCK,
Notary Public, D. C.

JAMES J. LAUGHLIN,
James J. Laughlin,
*National Press Bldg.,
Counsel for Defendant.*

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In District Court of the United States
for the District of Columbia

The Court resumes its session pursuant to adjournment: Mr.
Justice McGuire, presiding.

No. 70,905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Verdict

April 5, 1943

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorney, James J. Laughlin, Esquire, and thereupon the same jury that was respited in this case yesterday upon their oath say that the defendant is guilty on Count One of the indictment and guilty on Count Two, Petit Larceny; and thereupon each and every member of the jury is asked if that is his verdict and each and every member thereof say that the defendant is Guilty on Count One of the indictment and Count Two, Petit Larceny; and thereupon the defendant is committed to the Washington Asylum and Jail.

In the District Court of the United States
for the District of Columbia

Criminal No. 70905

UNITED STATES

v.

JAMES P. MITCHELL

Motion for new trial

Filed April 8, 1943.

Now comes the defendant through his counsel and moves the Court to set aside the verdict in the above entitled cause and grant a new trial and as reason therefor cites the following:

The verdict was contrary to the evidence.

13. The court erred in admitting evidence offered by the government.

The court erred in excluding evidence offered by the defendant.

The court erred in denying motion for continuance.

The court erred in refusing to sustain motion to suppress.

The trial judge was in error in refusing to disqualify himself after affidavit of bias and prejudice had been filed.

The assistant United States Attorney was guilty of misconduct.

The trial Judge was prejudiced toward the defendant.

The trial judge erred in refusing to keep the jury together after motion had been made.

The court erred in restricting cross-examination.

The court erred in requiring defendant to furnish original evidence against himself.

And the court erred in other matters apparent of record.

JAMES J. LAUGHLIN,

James J. Laughlin,

National Press Bldg.,

Counsel for Defendant.

Service acknowledged:

BERNARD MARCOLIUS,

Assistant U. S. Attorney.

In District Court of the United States for the District of
Columbia

The Court resumes its session pursuant to adjournment: Mr.
Justice McGuire, presiding.

No. 70905—Indicted for Housebreaking and Larceny

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UNITED STATES

vs.

JAMES P. MITCHELL

Order overruling motion for new trial

April 16, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendants motion for a new trial coming on to be heard, after argument by the counsel, is submitted to the Court, and is by the Court, overruled, to which action of the Court the defendant by his attorney prays an exception which is noted.

In District Court of the United States for the District of
Columbia

The Court resumes its session pursuant to adjournment: Mr.
Justice McGuire, presiding.

No. 70905—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Judgment and sentence

May 6, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon it is demanded of the defendant what

further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that for his said offense, the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment to the period of One (1) year to Three (3) years.

15 In the District Court of the United States for the
District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Order extending time within which to settle bill of exceptions

Filed June 22, 1943

Upon motion of the defendant and the United States Attorney having consented thereto, it is by the Court this 22d day of June 1943

Ordered that the time within which Bill of Exceptions in the above-entitled cause be and the same is hereby extended to the 19th day of August 1943. And it is ordered,

By the Court:

MATTHEW F. MCGUIRE, *Justice.*

In the District Court of the United States for the District of
Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Assignment of errors

Filed June 23, 1943

The Court erred:

1. In failing to grant the motion to suppress.
2. The refusal of the trial judge to disqualify himself after affidavit of bias and prejudice had been filed.

3. In refusing to grant the motion for continuance.
4. In admitting evidence offered by the Government.
5. In refusing to admit evidence offered on behalf of the defendant.
- 16 6. In refusing to declare a mistrial when the Assistant United States Attorney was guilty of misconduct.
7. In restricting cross-examination.
8. In requiring defendant to furnish original evidence against himself.
9. In refusing to properly apply the Supreme Court ruling of the McNabb case.
10. In denying motion for a new trial.
11. In entering judgment for the United States.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this 19th day of June 1943 mailed copy of this memorandum to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN,
James J. Laughlin,

In the District Court of the United States for the District of
Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Designation of record

Filed June 22, 1943

The Clerk will please prepare the record in the above-entitled cause and include therein the following:

1. Indictment.
2. Minute of Plea.
3. Motion to suppress.
4. Minute entry showing denial of motion to suppress.
5. Motion for continuance.
6. Minute entry showing denial for motion for continuance.
7. Affidavit of bias and prejudice.
- 7a. Motion to summon witnesses.

- 17 8. Bill of exceptions (to be furnished later).
 9. Assignment of Errors.
 10. This designation of record.

JAMES J. LAUGHLIN,
 James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of this Designation of Record to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
 James J. Laughlin.

This the 19th day of June 1943.

This Designation of Record approved.

MATTHEW F. MCGUIRE, *Justice.*

In the District Court of the United States
 for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Bill of exceptions

Filed Aug. 24, 1943

Be it remembered that this cause came on for trial on Thursday, April 1, 1943, before Justice Matthew F. McGuire, holding Criminal Court No. One of the District Court of the United States for the District of Columbia. The United States was represented by Bernard Margolius, Assistant United States Attorney, and the defendant was represented by James J. Laughlin.

On April 1, 1943, shortly before the case was called for trial, defendant filed a motion for continuance on the ground that a necessary witness for the defense, namely, one Cosmo Testa,
 18 was in New York, and the defendant had not sufficient time to summons him. The District Attorney noted that the defendant had been notified of the trial more than three days prior thereto. The Court thereupon overruled the motion and an exception was duly noted. The defendant also filed on April 1, 1943, a motion to suppress evidence in all the cases pending against him in the District Court, accompanied by an affidavit, and a hearing was held on the motion.

In support of his motion, the defendant took the stand and testified that he was arrested on October 12, 1942, and confined in Police Precinct Station No. 8 without an attorney and without a charge having been placed against him, and that he was not taken before a committing magistrate until October 20, 1942. He further testified that he at no time authorized the police to enter his home or to take anything therefrom, and at no time consented to the police officer so doing and no one gave any police officer such permission on his behalf. The property which the defendant wanted returned, he testified, was of the character set forth in his affidavit. Defendant testified that he was brutally beaten by the police while in custody, and a number of wounds and bruises were inflicted on his body, and a tooth was knocked out. On cross-examination the defendant testified that the property which he wanted returned included certain jewelry which belonged to his aunt and uncle. On being asked to enumerate the property he did not include certain items which were the subject of this prosecution.

On behalf of the Government Charles T. Williams testified that he was a member of the Police Department and that he accompanied the defendant from his home to No. 8 Precinct about seven o'clock p. m. on October 12, 1942, at which time the defendant was not under arrest, but was in the company of the officer, upon request of the officer that the defendant go with him for questioning. When they reached the precinct station he and defendant and another officer went into the Detective Room, where the defendant immediately admitted a series of housebreakings and larcenies. Defendant told the officers that the goods which he stole were located in various parts of his home on N Street NW.,

and gave the officers express permission to go to his home 19 and obtain all the property that was there. The witness

further testified that he at once went to the defendant's home with a patrol wagon and removed a considerable amount of property from various parts of the house. The witness further testified that the defendant was held in police precinct with no charge other than investigation being placed against him until Monday, October 19, 1942, and he was taken before the committing magistrate October 20, 1942. He testified that the defendant when taken to the precinct on October 12, 1942, was very cooperative and told the police that he wanted to help them in investigating the various housebreakings in which he was involved, and during the period when he was at the precinct even helped the various victims to identify their property. He testified that the defendant asked to be kept at the precinct station until the cases were cleared up. The witness further testified

that the defendant was not mistreated in any way, but on the contrary was shown every possible courtesy and was on occasions visited by his mother and others. The witness stated that when he obtained the property from the defendant's home he had no search warrant, but he testified further that before going to the defendant's home the defendant had told witness and other officers where they could find the property which had been stolen, and gave them permission to go to his home and recover it. The Government offered no further testimony. The motion to suppress was denied and an exception duly noted.

While the Court was hearing evidence on the motion to suppress, the defendant's mother, Mrs. Mary Blumenfeld, attempted to gain entrance to the courtroom through the main door in the rear of the court, which was guarded by a Deputy United States Marshal. At that time there was such a disturbance at the door that it attracted the attention of the Court, who inquired of the Marshal stationed at the door what the difficulty was. Counsel for the defendant thereupon told the Court that the person seeking admission was the defendant's mother. The Court thereupon informed the mother that the United States Marshal was stationed at the door in order to expedite and control the entrance and exit of spectators and others, and that a disturbance was not necessary. The mother thereupon took a seat in the courtroom and nothing more was said in open court about the incident. The Court recessed after its decision on the motion to suppress until 1:45 p. m.

Court reconvened at 1:45 p. m., at which time defense counsel called the Court's attention to the fact that during the noon recess the defendant had filed an affidavit of bias and prejudice against the trial judge. Thereupon the prospective jurors were excused from the courtroom and the trial court considered the affidavit to determine whether he should disqualify himself. Counsel for the defendant stated to the Court that the affidavit of bias and prejudice was in proper legal form, and that, therefore, the trial judge was unable to go into the truth or falsity of any of the matters contained therein, and as a result the trial judge was bound to disqualify himself. The Court invited comment on the affidavit by the Assistant United States Attorney. After due consideration of the affidavit and after advising counsel that it was making no point of the requirement that such an affidavit be filed ten days before the beginning of the term of Court, the Court pointed out that the factual basis set forth in the affidavit for the alleged bias against the defendant showed bias, if any, not against the defendant, but against the defendant's mother and the defendant's attorney, and declined to disqualify himself and ordered the trial to proceed.

Thereupon, a jury was selected and duly sworn to try the issues between the parties and an opening statement was made by counsel for the United States. Thereupon, to sustain the issues joined, the Government offered the following witnesses who testified substantially as follows:

Louise H. Meem and her husband, Harry G. Meem, both testified that during the month of August 1942 they were away on vacation at Colorado Springs, Colorado, when they were notified that their home on 34th Place in the District of Columbia had been broken into and entered. When they returned in September they examined the premises and found that a considerable amount of property had been taken from their home. Thereupon, certain articles of personalty were shown to the witnesses who

identified them as their property and which had been
21 stolen. These included several sets of cuff links (defendant at no time made any point of the fact that the Meem home had been broken into and property stolen therefrom). The witnesses further testified that their home was thoroughly ransacked, and that in almost every part of the house they found cigarette butts with cork tips, some of which bore the name "Raleigh." They further described how the house had been broken into and testified that the only one with authority to enter the home was one Plummer Fitch, their chauffeur and houseman.

Plummer Fitch being first duly sworn testified that he was the houseman and chauffeur of Mr. and Mrs. Meem and that he was in charge of the house while they were away on vacation. He testified that on the morning of August 12, 1942, he went to the Meem home where he discovered that it had been broken into through a basement window and found that the house had been "turned upside down." Every room had been ransacked. He found numerous cigarettes on the floor, all of which were of a cork tip variety. He notified the police.

Hortense Morris being first duly sworn testified that she was an employee of A. Kahn, Inc., and had been so employed for about twenty-five years; that she had charge of the records kept by that company of all sales of old gold and other articles, and that she made periodical reports of purchase of old gold and other items to the Police Department; that the record of her company disclosed that on August 13, 1942, one James Mitchell of 1427 W Street NW. had sold certain cuff links and other articles at her store. She was unable to identify who James Mitchell, indicated by her records, was.

Charles T. Williams being first duly sworn testified that he was an officer of the Metropolitan Police Department and that on October 12, 1942, after a careful examination of pawnbrokers' and second-hand stores' reports for the previous three or four months, went

to A. Kahn, Inc., and obtained from that company certain cuff links which had been sold by one James Mitchell. The cuff links which he so obtained were identified by the witness as the same cuff links which has been identified during the trial by Harry G. Meem as being his and having been stolen at the time his house was broken into. The witness further testified that he then went to 1427 W Street NW. but that no one by the name of Mitchell lived there and then methodically going to every address which resembled the one given he came to 1427 N Street NW. and there saw James Mitchell, the defendant here. This was about 2:00 in the afternoon. After going to Mr. Meem's home to have him identify the cuff links, Williams returned that evening to Mitchell's home in company of Officer Roland M. Kirby. They asked the defendant to accompany them. When the defendant asked where they were going they said they wanted to talk to him at the precinct station. No objection was made by the defendant to his being taken to the station. On the ride to the station the officers asked the defendant whether he wanted a smoke, and during the conversation about cigarettes he told them that he usually smoked Raleigh Cork Tips, and at one point Officer Williams went into a drugstore and while there, at the request of the defendant, purchased a package of cigarettes for him. When they reach'd the station they took the defendant in the Detective Room which was about ten or twelve feet away from the rail in the front part of the station. They then told the defendant that they knew what he had done and told him that he did not have to say anything, but that all they wanted to know was who had worked with him. The defendant thereupon freely admitted that he had broken into the home of Mr. and Mrs. Meem and admitted that he had taken the cuff links in question as well as the other property which was identified. He told the officers where they could find the property which had been stolen and gave them permission to go there and recover it. The defendant at all times was willing to cooperate with the police and at no time made any objection of being spoken to about the matter. The defendant made his admission of guilt within a few minutes after being brought into the station which was about 7:00 in the evening. The witness further testified that no force or persuasion was used upon the defendant and no threats or hope of reward or favor were held out to him. (Before the officers were questioned as to the statements made by the

23 defendant, the defendant out of the presence of the jury asked the trial court to exclude all the verbal statements made by him while in custody on the authority of *McNabb v. United States*, recently decided by the Supreme Court. Lengthy hearing and argument was had at the conclusion of which the Court remarked and defendant's counsel agreed that the issue drawn in the

testimony on the motion was one of fact whether the defendant had, at any time, made any admissions to the officers which they affirmed and he denied. The motion to exclude the alleged statements was denied and exception duly noted). The witness thereupon testified that after the defendant had admitted his guilt and had given him permission to go to his home and seize any property that was there, he returned to 1427 N Street NW., and there made a search of the premises where he recovered the property which had been stolen from the Meem home. He identified this property as the same which had been identified by Mr. and Mrs. Meem.

Roland M. Kirby being first duly sworn testified on behalf of the Government to the same facts as did Officer Charles T. Williams. Their testimony was substantially the same. The Government introduced in evidence all exhibits identified and rested. A defense motion for directed verdict was made and overruled and exception duly noted.

An opening statement was made by counsel for the defendant and the following testimony was offered on his behalf:

The defendant, James P. Mitchell, testifying on his own behalf, testified that he owned a rooming house at 1427 N Street NW., in the District of Columbia, which he operated, and that in the early afternoon of October 12, 1942, Officer Williams came to his house and stated that he was looking for a colored man named Mitchell; that after a few minutes the officer departed. That evening Officer Kirby came to his home and asked him to come to a car which was parked a short distance away. When he got to the car with Officer Kirby he was forced to enter the car where Officer Williams was seated at the wheel. The defendant asked both officers "What is this all about?" and the officers replied "You will soon find out." Defendant stated that he had at all times denied any participation in the housebreaking and larceny

herein involved. He testified further that he was beaten in the car and from time to time in the police precinct, and that on one occasion a tooth was knock from his mouth. Defendant testified further that he was taken to a committing magistrate for the first time on October 20, 1942. He testified also that at no time did he authorize the police officers to visit his home. He further testified that he did not visit A. Kahn, Inc., for the purpose of selling any old gold, and further testified that his name was carried in the telephone directory for a considerable period of time under the name of James P. Mitchell with an address at 1427 N Street NW.

On cross-examination defendant stated that although he was beaten so that his face became swollen and his skin bruised, he made no complaint to anyone at the precinct station, and his first complaint about the tooth that was broken was made at the jail for the first time about four or five weeks later. He testified further

that although he was severely beaten he made no admissions of guilt. With respect to the tooth he testified that this tooth broke off on the line even with the gum as a result of a punch made by one of the officers. This tooth was a molar. He took the broken part of the tooth from his mouth in the presence of the officers and they permitted him to put the same in his pocket. When asked where the tooth was at the present time he could not give any explanation. He testified further that no other tooth was hurt and had no dental treatment for that tooth until the middle of December. In being asked about police brutality, he testified that he was beaten continuously from the time he arrived at the precinct station for about fifteen or eighteen hours when he went into what he described as a coma, being unconscious from that time on for a considerable period. He admitted, however, that the next evening, that is, October 13, 1942, he was taken to Police Headquarters where he was photographed by a police photographer at which time he said nothing to the photographer or anyone else about his physical condition.

25 Thereupon Barbara Jenkins testified that she was defendant's fiancée, and that she had visited him at No. 8 Precinct Station four or five days after October 12th and noticed marks and bruises about his body.

Thereupon Mary Blumenfeld testified that she was defendant's mother, and that she visited the police precinct while defendant was then confined and that she observed bruises and marks on his body, and that at least on one occasion she observed him spitting blood. The defendant complained to her that he had been kicked in the stomach and that he had suffered severe injury.

Thereupon, Cosmo Testa testified for the defendant that he was a friend of defendant; that he saw the defendant at police precinct on the night of October 12, 1942, where he observed certain marks and bruises on his body and about his face. On cross-examination Cosmo Testa testified that the defendant's face was greatly swollen and the skin discolored. He admitted that he had been convicted of a crime. Thereupon the defendant rested.

In rebuttal the Government called Roy D. McClure, a member of the Metropolitan Police Department, who testified that he photographed the defendant on the evening of October 13, 1942, while the defendant was in custody. The photograph was identified and admitted in evidence over the objection and exception of the defendant. Thereupon the Government rested. A motion for directed verdict was again made and overruled, and exception duly noted.

After final arguments by counsel and the Court's instructions, the jury retired to deliberate and thereafter returned with a verdict

of guilty. Defendant was thereupon committed and a motion for a new trial was filed and denied and the defendant sentenced.

For the reason that the foregoing matters are not of record, the defendant moves that they be made of record so that he may pursue his appeal to the United States Court of Appeals for the District of Columbia, which is done; and the defendant presents this his Bill of Exceptions and requests that the same be filed, which is done this 24th day of

August 1943.

By the Court:

MATTHEW F. MCGUIRE, *Justice.*

Bill submitted by:

JAMES J. LAUGHLIN,

Attorney for Defendant.

Consent to the settling and signing of this Bill of Exceptions is hereby given.

CHARLES B. MURRAY,

Assistant United States Attorney.

8-23-43.

In the District Court of the United States for the District of Columbia

Criminal No. 70905

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

Supplemental designation of record

Filed July 12, 1943

The clerk will please include the following matters in the record:

1. Verdict.
2. Judgment and sentence.
3. Motion for new trial.
4. Minute Entry Denying motion for new trial.
5. Order extending time within which to settle Bill of Exceptions.
6. This supplemental designation of record.
7. Clerk certificate.

JAMES J. LAUGHLIN,

James J. Laughlin,

National Press Building,

Counsel for Defendant.

22

UNITED STATES VS. JAMES P. MITCHELL

27 I certify that copy of this Supplemental designation was mailed to Bernard Margolius, Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 30th day of June 1943.

This Supplemental Designation of Record ordered.

BOLITHA J. LAWS, *Justice*.

In the United States Court of Appeals for the District of
Columbia

No. 8533—April Term, 1943

No. 70905—Criminal, District Court

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Order

(Filed Sept. 15, 1943)

On consideration of appellant's motion filed herein on August 23, 1943, it is

Ordered that the Clerk of the District Court of the United States for the District of Columbia be, and he is hereby authorized and directed to certify and transmit to the Clerk of this Court the originals of all papers pertinent to the appeal in this cause.

Dated September 15, 1943.

Per Curiam.

A true Copy,

Test:

[SEAL]

JOSEPH W. STEWART,

*Clerk of the United States Court of Appeals
for the District of Columbia.*

28 In the District Court of the United States for the
District of Columbia

Holding a Criminal Term—Criminal No. 70905

UNITED STATES

vs.

JAMES P. MITCHELL

Supplemental designation of record

Filed Sept. 20, 1943

The Clerk of the Court will please include as a further part of the record on appeal in the above-entitled cause the following:

Order of United States Court of Appeals, dated September 15, 1943, directing and authorizing the Clerk of the District Court of the United States for the District of Columbia to certify and transmit to the Clerk of the United States Court of Appeals for the District of Columbia the originals of all papers pertinent to the appeal in this cause.

JAMES J. LAUGHLIN,
Attorney for Defendant.

I consent to this Supplemental Designation of Record:

CHARLES B. MURRAY,
Charles B. Murray,
Assistant United States Attorney.

This Supplemental Designation of Record approved:

JAMES M. PROCTOR, *Justice.*

[Clerk's certificate to foregoing transcript omitted in printing.]

32 In the District Court of the United States for the
District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Notice of appeal

Filed June 10, 1943

James P. Mitchell, Washington Asylum and Jail.
James J. Laughlin, National Press Bldg.

Offense: Housebreaking and Larceny.

Date of judgment: June 4, 1943.

Brief description of judgment or sentence: One and one-half to four and one-half years in prison.

Name of prison where now confined, if not on bail: Washington Asylum and Jail.

I, the above-named appellant, hereby appeal to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

JAMES P. MITCHELL,
Appellant.

JAMES J. LAUGHLIN,
James J. Laughlin,
Attorney for Appellant.

Date: June 10, 1943.

GROUND'S OF APPEAL

Just to what extent is the Supreme Court ruling in the McNabb case applicable to admissions and confessions made while in custody.

A true copy.

Test:

[SEAL]

CHARLES E. STEWART,
Clerk.
MARION E. LEWIS,
Deputy.

33 In the District Court of the United States for the
District of Columbia

Criminal No. 70890—Charge Housebreaking & Larceny

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Docket entries

Attorney, James J. Laughlin.

1942

Nov. 16—Presentment and indictment filed: Defendant committed to W. A. & Jail.

Nov. 19—Appearance of James J. Laughlin entered.

Nov. 20—Arraigned, Plea Not Guilty, 10 days, etc.

Nov. 25—Bond fixed by the Court at \$15,000.00 to cover all cases.

Dec. 23—Bond fixed by the Court at \$5,000.00 to cover cases 70884 thru 70907. Recog. \$5,000.00 taken with Wm. J. O'Neil, surety, covering case 70884 thru 70907.

1943

Mar. 31—Motion to Suppress and affidavit in support thereof filed.

May 24—Motion to suppress the evidence and affidavit in support thereof filed, submitted without argument and denied. Exception. Jurors sworn on voir dire. Jury sworn and respited until tomorrow.

May 25—Trial resumed, same jury; deft's prayer filed. Case respited until tomorrow.

May 26—Trial resumed, same jury; Verdict Guilty as indicated. Defendant remanded to W. A. & Jail.

May 29—Motion for new trial filed.

June 4—Motion for a new trial is argued and overruled. Exception. Sentenced to Imprisonment. For period of 1½ yrs. to 4½ yrs. to run consecutively with 70903. Judgment signed (Laws, J.). Term continued to July 15, 1943.

June 10—Notice of Appeal filed. Pauper affidavit and Order filed (Laws, J.).

Date June 10th, 1943.

Attest:

[SEAL]

CHARLES E. STEWART,

Clerk.

MARION E. LEWIS,

Deputy Clerk.

34

In the United States District Court

No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of poverty

Filed June 10, 1943

DISTRICT OF COLUMBIA, ss:

JAMES P. Mitchell, being duly sworn according to law deposes and says that he is the defendant in the above-entitled action; that he is a citizen of the United States, and that because of his poverty he is unable to pay the costs of said action or to give security therefor.

(Signed) JAMES P. MITCHELL.

Sworn to and subscribed before me this 9th day of June 1943.

[SEAL]

(Signed) LILLIAN A. TRAMMELL,

Notary Public, D. C.

Order of court

It is ordered that the defendant in the above-entitled action be and he hereby is permitted to prosecute said action to conclusion without prepayment of fees or costs. I certify that this appeal is taken in good faith and not for purposes of delay.

BOLITHA J. LAWS, *District Judge.*

Dated June 10, 1943.

A true copy.

Test:

[SEAL]

CHARLES E. STEWART,
Clerk.

MARION E. LEWIS,
Deputy.

35 In the District Court of the United States for the
District of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

In the District Court of the United States for the District of
Columbia

Holding a Criminal Term—October Term, A. D. 1942

G. J. No. Orig., Criminal No. 70899, Housebreaking and Larceny

Indictment

Filed Nov. 16, 1942

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one James P. Mitchell, on, to wit, the first day of October 1942, and at the District of Columbia aforesaid, the dwelling of one Anthony F. G. Lucas and one Ruth H. Lucas, there situate, feloniously did enter, with intent to commit therein the crime of larceny, to wit, with intent the goods, chattels, and property in the said dwelling then and there being, feloniously to steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second count: And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That one James P. Mitchell, on, to wit, the first day of October 1942, and at the District of Columbia aforesaid, one 36 revolver, of the value of forty-five dollars, one revolver, of the value of thirty-five dollars, one revolver, of the value of one hundred dollars, one miniature pistol, of the value of three dollars, one set of cuff links, of the value of forty-five dollars, one watch, of the value of thirty-five dollars, and one knife, of the value of three dollars and fifty cents, of the goods, chattels, and property of one Anthony F. G. Lucas; one camera, of the value of forty-five dollars, one pencil, of the value of thirty dollars, one watch, of the value of eighty dollars, one fountain pen, of the value of twelve dollars and fifty cents, two finger-rings, each of the value of ten dollars, one pair of opera glasses, of the value of twenty-five dollars, and one dollar in money, of the value of one dollar, of the goods, chattels, money, and property of one Ruth H. Lucas, then and there being found in the dwelling referred to in the first count of this indictment, feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,

*Attorney of the United States in
and for the District of Columbia.*

A true bill:

HARRY W. BOSS, *Foreman.*

In the District Court of the United States for the District of
Columbia

The Court resumes its session pursuant to adjournment: Mr.
Justice Adkins, presiding.

UNITED STATES

v.

JAMES P. MITCHELL

No. 70885, 70886, 70887, 70888, 70889, 70890, 70891, 70892, 70893,
70894, 70895, 70896, 70897, 70898, 70899, 70900, 70901, and 70902—
Indicted for Housebreaking and Larceny

37

Arraignment and plea, etc.

November 20, 1942

Come as well the Attorney of the United States, as the
defendant in proper person, in custody of the Superin-
tendent of the Washington Asylum and Jail, and by his attorney,
James J. Laughlin, Esquire; whereupon the defendant being ar-
raigned upon each indictment, the reading whereof he specifically
waives, pleads not guilty thereto on each case, and for trial puts
himself upon the country and the Attorney of the United States
doth the like; and thereupon by consent of the United States At-
torney, the defendant is granted leave within Ten (10) days to
withdraw said plea and demur to, or move to quash each said indict-
ment, or otherwise plead as he may be advised.

In the District Court of the United States for the District
of Columbia

Criminal No: 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

**Affidavit of bias and prejudice*

Filed May 12, 1943

Now comes the defendant in the above-entitled cause and says
unto the Court that the Honorable Matthew F. McGuire has a

personal bias and prejudice against him and that defendant believes it would be impossible to obtain a fair and impartial trial before Judge McGuire. The personal bias and prejudice consist of the following:

1. On the day set for the trial of defendant in another case, that is to say April 1, 1943, a hearing was held before the said judge on defendant's motion to suppress certain evidence and while the hearing was in progress the said judge accused the mother of defendant of creating a disturbance in the court room and severely rebuked her in the presence of all persons concerned. The rebuke was unnecessary and uncalled for and the said judge was so prejudiced that he prevented the mother of defendant from making any explanation. When in truth and in fact the mother had been delayed in getting to the court house and merely
38 sought to enter the court room where she was needed as a witness and the marshall on duty at the door leading to the court room provoked the disturbance. This incident which was in no sense justified created such hostility and such an air of bad feeling toward the defendant that it was impossible for the said judge to deal fairly with the defendant and caused the defendant to file an affidavit of bias and prejudice before the said judge, said affidavit of bias and prejudice having been overruled by the said judge and the action of the said judge in overruling this affidavit has been made an assignment of error to be determined by the United States Court of Appeals.

2. Defendant says when he was on the witness stand testifying in the motion to suppress the trial judge exhibited a feeling of prejudice and hostility toward him and by his manner of expression and gestures made by him the defendant is firmly convinced that the said judge has a strong resentment against him and believes that the defendant is guilty of the offenses with which he is charged and in this situation the trial judge could not deal fairly with the defendant.

3. During the trial of the defendant before the said judge the defendant believes that the said judge took a violent dislike toward him and on several occasions when there were conferences at the bench the trial judge pounded his fist on the desk and expressed in such a loud manner that it was apparent to the jury that the said judge had a strong feeling against the defendant, and the defendant believes that the jury felt that the trial judge wanted the defendant convicted, and on this account it was impossible for the defendant to receive a fair and impartial trial before the said judge.

In view of the above the defendant is of the opinion that Judge McGuire has a definite personal bias and prejudice against him; that he has exhibited the personal bias and prejudice in

such a manner as to leave no doubt in the mind of the defendant that he could not obtain a fair and impartial trial at the hands of the said judge. The defendant says further that when the defendant first came into court for sentence after his conviction the said judge expressed the belief that the defendant was entitled to the benefit of probation and was inclined to grant

39 probation to the defendant in view of the defendant's prior good record, but permitted Mr. Margolius, Assistant United

States Attorney, to state to the said judge that the defendant deserved a very severe sentence and also permitted Mr. Margolius to state that a police officer had stated to Mr. Margolius that the defendant had told the police officer, who was unnamed, that the defendant intended after he had served his sentences in these cases to do the same thing all over again. Defendant says that this is wholly untrue and that no such statement as related by Mr. Margolius was ever made to any police officer or to any other person. As a matter of fact, information was conveyed to the defendant that certain police officers had stated that Mr. Margolius had a bitter dislike for and intense hatred of the defendant and would move heaven and earth to see that he was placed in the penitentiary just as quickly as Mr. Margolius could set the machinery of the courts into action and that the defendant's case was in the opinion of Mr. Margolius his main case for the year 1943. Defendant says that his attorney realizing that the statements made by Mr. Margolius had no support in the record and were based on the wildest possible speculation was anxious that the judge receive the true facts as to just what had happened and an effort was made by defendant's counsel to reply in kind to Mr. Margolius but the trial judge would not permit defendant's counsel to make the necessary explanation or to permit him to counteract or soften the damaging nature of Mr. Margolius' untrue statements. It is the view of the defendant therefore that in this state of the record that the defendant could not be dealt with fairly in the courtroom of Judge McGuire.

Defendant says that this affidavit is not filed within the ten-day limit specified in the statute due to the fact that notice of trial was received by his counsel on the late afternoon of Friday, May 7, 1943. And actual word could not be relayed to the defendant until Sunday, May 9, 1943, when his counsel asked defendant's mother to tell him when she visited defendant at the jail on May 9. This affidavit was forwarded by defendant's counsel to defendant by special delivery on May 9, 1943 but did not reach him at the jail until the late afternoon of May 10, and there
40 is now no Notary Public on duty at the jail the affidavit could not be executed until defendant arrived at the court

house on May 12, 1943. It is necessary to make this statement in order to satisfy the requirements of the statute.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 12th day of May 1943.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

I certify that this affidavit is filed in good faith and not for the purpose of delay.

JAMES J. LAUGHLIN,
James J. Laughlin,
Counsel for Defendant.

Copy of this affidavit mailed to Bernard Margolius, Esq.

JAMES J. LAUGHLIN.
James J. Laughlin.

MAY 11, 1943.

In the District Court of the United States for the District of
Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Motion to suppress

Now comes the defendant and moves the Court to suppress the evidence seized in the above entitled cause inasmuch as it was obtained in violation of the constitutional rights of the defendant.

JAMES J. LAUGHLIN,
James J. Laughlin,
*National Press Bldg.,
Counsel for Defendant.*

41 Let this be filed. It appearing subject matter of this motion previously has been passed upon by the Court, motion to suppress will be overruled. Exception granted defendant.

BOLITHA J. LAWS, J.

In the District Court of the United States for the District of
Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Affidavit of James P. Mitchell

DISTRICT OF COLUMBIA, ss:

James P. Mitchell being first duly sworn on oath as required by law deposes and says that he is the defendant in the above-entitled cause and that in October 1942 he was the operator of the rooming house located at 1427 N St. NW., in the District of Columbia, and that the police officers unlawfully and without the consent or permission of the defendant entered the premises and seized certain property then in the possession of the defendant and said property was seized without a warrant. The property seized is included in the subject matter of the above-numbered indictment.

JAMES P. MITCHELL.
James P. Mitchell.

Subscribed and sworn to before me this 24th day of May 1943.

CHARLES E. STEWART,
Clerk.

By SAMUEL SILVERMAN,
Deputy Clerk.

42 In the District Court of the United States for the
District of Columbia

The court resumes its session pursuant to adjournment: Mr.
Justice Laws presiding.

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Motion to suppress denied, etc.

May 25, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the

Washington Asylum and Jail, and by his attorney, James J. Laughlin, Esquire; and thereupon the defendant's motion to suppress the evidence and affidavit in support is submitted to the Court without argument and is denied. To which action of the Court the defendant is allowed an exception which is noted; whereupon the jurors of the regular petit jury panel serving in Criminal Court Number Three being called, are sworn upon their voir dire; and thereupon comes a jury of good and lawful persons of the District of Columbia, to wit:

Mrs. Rita S. Aires.	Francis A. Jones.
Mrs. Alice C. Quigley.	Thomas G. Jones.
George W. Birch.	James J. Lawless.
Mrs. Margaret S. O'Donnell.	Milton D. Kendall.
Albert J. Nalls.	Roy L. Loan.
Mrs. Louise P. Nelson.	Charles E. Perry.

who being sworn to well and truly try the issue joined herein, are respite until the meeting of the Court tomorrow.

43 In the District Court of the United States for the District of Columbia

The court resumes its session pursuant to adjournment: Mr. Justice Laws presiding.

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Verdict

May 26, 1943

Come again the parties aforesaid, in manner as aforesaid; and the same jury that was respited in this case yesterday; whereupon the said jury upon their oath say that the defendant is guilty in manner and form as charged in the indictment; whereupon said defendant is remanded to the Washington Asylum and Jail.

In the District Court of the United States for the District of
Columbia

Criminal No. 70899

UNITED STATES

v.

JAMES P. MITCHELL

Motion for new trial

Filed May 29, 1943

The defendant moves for a new trial.

When this motion is argued the point will be stressed as to the proper applicability of the *McNabb* case in the Supreme Court. It may well be since defendant was held so long in custody—eight days—before being taken to a committing magistrate that all statements oral and verbal while in custody must be excluded. If that be so then this verdict is erroneous.

There is also the question as to the suppression of evidence and whether a prior ruling—under the circumstances of such ruling—foreclosed the question here.

44 There were no errors in the admission or exclusion of evidence and the trial judge was eminently fair throughout. It is exceedingly doubtful whether any trial judge exercised such painstaking care in protecting the rights of an accused as the trial judge did here. We must acknowledge that fact and express our approval.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Bldg.,
Counsel for Defendant.

I certify that I have this day mailed copy of this motion to
Bernard Margolius, Esq., Assistant U. S. Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 28th day of May 1943.

In the District Court of the United States
for the District of Columbia

The court resumes its session pursuant to adjournment: Mr.
Justice Laws, presiding.

No. 70899—Indicted for Housebreaking and Larceny

UNITED STATES

vs.

JAMES P. MITCHELL

Judgment and sentence, etc.

June 4, 1943

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorney, James J. Laughlin, esquire; and thereupon the defendant's motion for a new trial, coming on to be heard after argument by the counsel, is by the Court overruled, to which action of the Court the defendant is allowed an exception which is noted; and thereupon it is demanded of the defendant what further he has to say why the

45 sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court, that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One and one-half (1½) years to Four and one-half (4½) years, said sentence to run concurrently with sentence imposed in Criminal Case No. 70905.

In the United States District Court

No. 70899

UNITED STATES

vs.

JAMES P. MITCHELL

Affidavit of poverty

Filed June 10, 1943.

DISTRICT OF COLUMBIA, ss:

James P. Mitchell, being duly sworn according to law, deposes and says that he is the defendant in the above-entitled action; that he is a citizen of the United States, and that because of his poverty he is unable to pay the costs of said action or to give security therefor.

JAMES P. MITCHELL.

Sworn to and subscribed before me this 9th day of June 1943.

LILLIAN A. TRAMMELL,
Notary Public, D. C.

Order of court

It is Ordered that the defendant in the above-entitled action be and he hereby is permitted to prosecute said action to conclusion without prepayment of fees or costs. I certify that this appeal is taken in good faith and not for purposes of delay.

BOLITHA J. LAWS, *District Judge.*

Dated: June 10, 1943.

43 In the District Court of the United States for the
District of Columbia

Criminal No. 70699

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Assignment of errors

Filed June 22, 1943

The Court erred:

1. In denying the motion to suppress evidence.
2. In admitting testimony offered by the Government as to verbal statements made by the defendant while in custody.
3. In rejecting instructions requested by the defendant.
4. In refusing to give proper effect to the doctrine of the Supreme Court in the *McNabb* case.
5. In denying the motion for a new trial.
6. In entering judgment for the United States.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this 19th day of June 1943 mailed copy of this memorandum to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

In the District Court of the United States for the District
of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Designation of record

Filed June 22, 1943

The Clerk will please prepare the record in the above entitled cause and include therein the following:

1. Indictment.
- 47 2. Motion to suppress.
3. Minute entry showing denial of motion to suppress.
4. Minute entry showing plea of not guilty.
- 4a. Affidavit of bias and prejudice.
5. Bill of exceptions (to be furnished later).
6. Assignment of errors.
7. This designation of record.
8. Clerk's certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of this Designation of Record to Bernard Margolius, Esq., Assistant United States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 19th day of June 1943.

This Designation of Record ordered.

BOLITHA J. LAWS, Justice.

In the District Court of the United States for the District
of Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

vs.

JAMES P. MITCHELL

Supplemental designation of record

Filed June 30, 1943

The Clerk will please prepare a Supplemental Designation of
Record which will include therein the following:

1. Verdict.
2. Judgment and sentence.
3. Motion for new trial.
4. Minute entry showing denial of motion for new trial.
 - 4a. Pauper affidavit and order of court thereon.
- 48 5. This supplemental designation of record.
6. Clerk certificate.

JAMES J. LAUGHLIN,
James J. Laughlin,
National Press Building,
Counsel for Defendant.

I certify that I have this day mailed copy of supplemental
designation of record to Bernard Margolius, Assistant United
States Attorney.

JAMES J. LAUGHLIN.
James J. Laughlin.

This the 30th day of June 1943.

This Supplemental Designation of Record ordered.

BOLITHA J. LAWS, *Justice*.

In the District Court of the United States for the District of
Columbia

Criminal No. 70899

UNITED STATES OF AMERICA

v.

JAMES P. MITCHELL

Bill of exceptions

Filed July 12, 1943

Be it remembered that this cause came on for trial on Monday,
May 24, 1943, before Justice Bolitha J. Laws, holding Criminal

Court No. 3 of the District Court of the United States for the District of Columbia. The United States was represented by Mr. Bernard Margolius, Assistant United States Attorney, and the defendant was represented by Mr. James J. Laughlin. Before the jury was impaneled the defendant moved the Court to suppress evidence. This was denied, it being shown to the Court that such a motion in this case was made before Mr. Justice McGuire and overruled. Exception was noted and allowed. Whereupon

49 a jury was selected, and being satisfactory to both parties, was sworn to try the issues. An opening statement was made by the Government. Whereupon, to sustain the issues the Government introduced the following testimony:

Anthony Lucas being first duly sworn testified that his home, located in the District of Columbia, had been broken into on the 1st day of October 1942 and that a considerable amount of property had been taken from his home. (Defendant during the trial did not dispute the fact that the Lucas home had been broken into and property stolen therefrom.) The witness identified certain property exhibited to him, including three revolvers, a camera, a pair of binoculars, jewelry, and various other items. The witness testified further that he did not know the defendant; and he had not given him permission to enter his home or remove anything therefrom.

Charles T. Williams being called as a Government witness, and first duly sworn, testified that he was a member of the Metropolitan Police Department and assigned to the investigation of this case. He testified that on the afternoon of October 12, 1942, he visited a certain address in the fourteen hundred block of N Street NW. where he had a conversation with the defendant. The purpose of this conversation was to ascertain whether or not the defendant was the individual for whom he was looking with respect to housebreaking. That evening between 6 and 7 o'clock he returned to the fourteen hundred block of N Street in the company of Detective Roland Kirby.

They told the defendant that they would like to talk to him and would he mind coming with them. The defendant asked them if they could talk to him where they were, to which the officers replied that they would rather talk to him at the precinct station. Whereupon, he accompanied them without objection to No. 8 Precinct Station. The witness further testified that during the ride to the precinct station they had no conversation about this case. When they reached the precinct station the officers and the defendant went into the detective room where they held a conversation. The defendant was told by the detectives that he did not have to answer any questions if he did not want to, but that

50 all they wanted to find out was who was working along with him. At this time the defendant readily admitted that he had broken into the Lucas home, and had removed therefrom a considerable amount of property and told the officers that they could find that property in various parts of the defendant's home on N Street, and some of it was located in two trunks in the basement and that they could go to his home with his permission and recover the same. The witness further testified that the defendant from the moment he was brought into the station was highly cooperative and freely admitted his guilt without persuasion or inducement or threats or hope of reward or immunity, and that it was only a few minutes after he was brought into the precinct station that he told them the whole story. The witness further testified that he and Detective Kirby thereupon immediately left to return to the fourteen hundred block of N Street and from various parts of the house, as indicated by the defendant, recovered the numerous items which had been identified earlier in the trial by witness Lucas as being his property and stolen on the night of October 1, 1942. Upon cross-examination the officer testified that he did not strike or beat the defendant or in any manner mistreat him.

Max Zweig being first duly sworn testified that he was a dealer in second-hand goods, and upon examination of the property which had been identified and introduced as evidence in this case stated that it was greatly in excess of \$50.00.

Roland M. Kirby being first duly sworn testified that he was a member of the Metropolitan Police Department and has been for eighteen years; that he visited the defendant's home on N Street on the night of October 12, 1942, between 6 and 7 o'clock and accompanied him to the car in which Officer Williams was seated. They asked the defendant to come with them because they wanted to talk to him. He agreed and they immediately went in the automobile to No. 8 Precinct where he was taken to the detective room. Whereupon, the witness testified that the defendant freely admitted his guilt and stated that he had broken into the Lucas home and stolen the property in question. The defendant told him and Officer Williams about where they could find the property in his home and gave them permission to go there and recover the same. The defendant at all times was willing to cooperate with the police and at no time made any objection to being spoken to about the matter. He was advised that he did not have to say anything, but did, within a period of ten or fifteen minutes, give them the whole story including the permission to make the search and seizure. Upon cross-examination the witness testified that the defendant was booked at No. 8 Precinct on the night of October 12, 1942, about fifteen minutes after he was

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brought into the precinct station, and just as the officers were going to return to the N Street home to get the property. The witness stated that no housebreaking charge was placed against defendant until October 19th and that he was not taken before a committing magistrate until October 20th. (It was explained to the Court at the bench, out of the presence of the jury, that the reason why the defendant was kept at the precinct station for almost a week without being taken before a committing magistrate was the fact that the police officers had recovered from the defendant's home a great amount of property that had been stolen in more than thirty other housebreakings in the Northwest section of Washington, the different property filling almost an entire room at the precinct station. During this period defendant cooperated with the police and the victims of these housebreakings in identifying the property. The defendant remained at the precinct station for that purpose without objection on his part.) On cross-examination the witness testified that he did not strike or beat the defendant or in any manner mistreat him. On the contrary the defendant required no persuasion or inducement to admit his guilt.

Before either of the police officers were questioned about any statements of the defendant while in custody, there was a conference at the bench participated in by the trial judge, Assistant United States Attorney and counsel for the defendant. Counsel for the defendant asked the trial judge to exclude all verbal and written statements made by the defendant relying on the case of *McNab v. United States*, recently decided by the Supreme Court but this was denied and exception duly noted. The Government thereupon rested.

52 Motion for directed verdict was made and overruled; and counsel for defendant thereupon made an opening statement. Thereupon the following testimony was offered on behalf of the defendant:

James P. Mitchell, the defendant, testified in his own behalf that for some time he had conducted a rooming house at 1427 N Street NW., and that Officer Williams visited his house about 2 o'clock in the afternoon of October 12, 1942, and stated that he was looking for a colored man named Mitchell and departed within a few minutes. He further testified that in the early part of that same evening Officer Kirby came to his house and asked him if he would go to his automobile which was parked on N Street, a short distance from defendant's home. Defendant testified that he went to the automobile and that Officer Williams, who had been to his home in the early part of the afternoon, was seated behind the wheel. He testified that he was forced to enter the car, getting into the back seat with Detective Kirby. He asked the officers what it was all about, to which the officers replied, "You will

soon find out." Defendant testified further that he was slapped two or three times by both officers while in the car, and after being taken to the precinct station was beaten, suffering many injuries and bruises. As a result of one blow to the face the defendant testified that one of his molars was broken off at the gum line. Defendant testified that he was kept in the police precinct until October 20th, when he was taken before a committing magistrate for the first time. He denied all participation in connection with the Lucas case. Upon cross-examination the defendant stated that although he was beaten so that his face became swollen and his skin bruised, he made no complaint to anyone at the precinct station although he admitted seeing various officers and the police captain in charge of the station. He testified further, that although he was so beaten he made no admissions of guilt as testified to by the police officers. With respect to the broken tooth, he testified that this tooth broke off on a line even with the gum as a result of a punch made by one of the officers, and that he took the broken portion of the tooth from his mouth in the presence of the officers who permitted him to put the same in his
53 pocket. However, he could not produce the tooth and could not explain its absence. Furthermore, he testified that no other tooth was hurt, and that he did not suffer any pain from the injured tooth until many weeks later and, in fact, did not have any dental treatment until the middle of December. He denied that the entire tooth was, in fact, removed by the jail dentist in the middle of December because of trouble which started about that time. Defendant further admitted that about midnight of the night of his arrest the police officers took him back to his home where they permitted him to feed his dog.

Mary Blumenfeld, being first duly sworn testified on behalf of defendant that she visited the defendant while in the police precinct, and that she observed the physical condition of the defendant and noticed marks and bruises on his body and on one occasion noticed he was spitting blood. The defendant complained to her of severe pains in his stomach. Thereupon the defendant rested.

In rebuttal the Government called Captain Arthur C. Belt, the Commanding Officer of No. 8 Precinct, who was on duty at No. 8 while the defendant was there confined. He testified that the defendant made no complaint to him of any police brutality or mistreatment, and at no time did he observe anything about the defendant which would indicate police beating or mistreatment.

Anthony Lucas was recalled and testified that he saw the defendant in the precinct station on the 13th or 14th of October and had a conversation with him. From his observation there

was nothing about the appearance of the defendant which indicated that he had been beaten or mistreated, and the defendant made no statement to him of such fact. Thereupon the Government rested.

Defendant renewed his motion for a directed verdict, the same was overruled and exception duly noted. Final statements were made by Counsel and the Court instructed the jury. The jury retired and returned with a verdict of guilty.

For the reason that the foregoing matters are not of record, the defendant moves that they be made a record so that he may pursue his appeal to the United States Court of Appeals for the

54 District of Columbia, which is done; and the defendant presents this his Bill of Exceptions and requests that the same be filed, which is done this 12th day of July 1943.

By the Court:

BOLITHA J. LAWS, *Justice*.

Consent to the settling and signing of this Bill of Exceptions is hereby given.

BERNARD MARGOLIUS,

Assistant United States Attorney.

[Clerk's certificate to foregoing transcript omitted in printing.]

55 In United States Court of Appeals, District of Columbia

Nos. 8533-8547

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the District Court of the United States for the District of Columbia

Argued October 8, 1943. Decided October 25, 1943

Mr. James J. Laughlin, for appellant.

Mr. Charles B. Murray, Assistant United States Attorney, with whom Messrs. Edward M. Curran, United States Attorney, and Bernard Margolius, Assistant United States Attorney, were on the brief for appellee.

Before GRONER, C. J., and MILLER and EDGERTON, JJ.

*Opinion***PER CURIAM:**

Appellant was tried and convicted on two indictments, each charging housebreaking and larceny. The trials were separate, but as the main ground of alleged error is the same, and as the evidence, except as to the house burglarized and the property stolen, is also the same, the appeals in both cases were consolidated for argument in this Court. The evidence against appellant consists of stolen property found in his house and of alleged verbal confessions of guilt. The seizure of the property, without search warrant, was said by the officers to have been made with appellant's consent and as a part of his confession made immediately after his arrest freely, voluntarily and without compulsion or inducement of any sort. Appellant denied he had given consent to have his house searched and denied that he had made any confession to the police. But the trial judge who heard the question—apart from the jury—admitted the evidence and it is this ruling which is attacked on this appeal. If this were all, the answer

would be plain, but as it happens, there is another element 56 in the case which, as we think, places a different aspect on the question. This grows out of the fact that after appellant was arrested and brought from his home to the Police Station and interrogated by the officers, the confession obtained and his consent to the search given, he was continued under arrest for more than a week by the police without being brought before a magistrate, commissioner or court, and this in the very teeth of the statute which commands arraignment "immediately and without delay."¹ It was almost this identical situation which, the Supreme Court in *McNabb v. U. S.* said, makes a confession, voluntary or involuntary, inadmissible in evidence on the trial of the case.²

In the *McNabb* case five uneducated mountain men were arrested for the murder of a revenue officer. They were taken into custody and more or less continuously questioned for two days in the Federal Building in Chattanooga, Tennessee, by members of the Alcohol Tax Unit before they were committed. Toward the end of the period of their detention they made confessions which the trial court decided were voluntary. After their conviction, on appeal to the Supreme Court, that Court held the confessions inadmissible and reversed the judgments. The principle of the decision was that since the Congressional requirement that police officers take an accused person before a judicial officer for commitment with reasonable promptness was designed to avoid "all

¹ R. S. D. C. § 397; Act July 16, 1862, Ch. 181, Sec. 10, V. 12, p. 581; D. C. Code (1940), Title 4, Sec. 140.

² 318 U. S. 332.

the evil implications of secret interrogations of persons accused of crime," and to check "resort to those reprehensible practices known as the 'Third Degree,'" the violation of the statute in "flagrant disregard of the procedure which Congress has commanded," was sufficient to require the exclusion of all evidence so obtained from the accused. As to this the Supreme Court said:

"* * * The record leaves no room for doubt that the questioning of petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of the law."

This unambiguous language leaves us no alternative but to apply the same rule with the same result to the facts in the present case. That this new rule, as Mr. Justice Reed calls it in his dissent, introduces a far-reaching innovation in the established rules of evidence in criminal cases will hardly be questioned, for
57 heretofore the test of admissibility has been thought to be limited to the question—was the confession free and voluntary. Likewise, that its universal application in the Federal Courts will, in some cases—as it may in this—result a miscarriage of justice is obvious. But doubtless this contingency was fully considered by the Supreme Court, and the conclusion deliberately reached that this—in the cases in which it occurs—will prove a lesser evil than the perpetuation by court approval of a violation by police of statutes designed to protect the personal rights of the individual and preserve his immunity from abuse and from imprisonment except upon a judgment of his peers and the law of the land. In this view it becomes our duty to reverse the judgments and remand the cases to the District Court for new trials in accordance with the views expressed herein.

No. 8533 Reversed.

No. 8547 Reversed.

58 United States Court of Appeals for the District of
Columbia

No. 8533—October Term, 1943

JAMES P. MITCHELL, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the
District of Columbia

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court for a new trial in accordance with the views expressed in the opinion of this Court.

PER CURIAM.

Dated October 25, 1943.

59 United States Court of Appeals for the District of
Columbia

No. 8547—October Term, 1943

JAMES P. MITCHELL, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the
District of Columbia

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and

that this cause be, and it is hereby, remanded to the said District Court for a new trial in accordance with the views expressed in the opinion of this Court.

PER CURIAM.

Dated October 25, 1943.

60 In the United States Court of Appeals for the District of
Columbia

Nos. 8533, 8547

JAMES P. MITCHELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

United States Court of Appeals for the District of Columbia.
Filed Nov. 23, 1943. Joseph W. Stewart, Clerk.

Designation of record

The Clerk will please prepare a transcript on application to the Supreme Court of the United States for certiorari in the above-entitled causes including therein the following:

1. The printed records which appear in the form of an appendix to appellee's brief;

2. Opinion;

3. Judgments.

Stricken on authority of Mr. Jennings of the Solicitor General's Office.

6. This designation;

7. Clerk's certificate.

CHARLES FAHY,

Solicitor General,

Attorney for Appellee.

Service of designation of record acknowledged this 23rd day of November, A. D. 1943.

JAMES J. LOUGHLIN,

Counsel for James P. Mitchell, Appellant.

61 United States Court of Appeals for the District of
Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 60, both inclusive, constitute a true

copy of the appendix to the appellee's brief and the proceedings of the said Court of Appeals as designated by counsel for appellee in the case of James P. Mitchell, Appellant vs. United States of America, Appellee, Nos. 8533, 8547—October Term, 1943, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fourth day of November A. D. 1943.

[SEAL]

JOSEPH W. STEWART,

*Clerk of the United States Court of Appeals
for the District of Columbia.*

62

Supreme Court of the United States

No. 514. October Term, 1943

Order allowing certiorari

Filed January 17, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

63

Supreme Court of the United States

No. 515. October Term, 1943

Order allowing certiorari

Filed January 17, 1944

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

64

Supreme Court of the United States

Nos. 514 & 515. October Term, 1943

Order granting leave to respondent to proceed in forma pauperis

January 17, 1944

On consideration of the motion of respondent for leave to proceed herein in forma pauperis,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

[Endorsement on cover:] File Nos. 48007, 48008. U. S. Court of Appeals, District of Columbia, Term No. 514. The United States of America, Petitioner vs. James P. Mitchell. Term No: 515. The United States of America, Petitioner vs. James P. Mitchell. Petition for writs of certiorari and exhibit thereto. Filed November 29, 1943. Term No. 514 O. T. 1943, 515 O. T. 1943.